



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 30, 2008

CBCA 1247-RELO

In the Matter of ROBERT L. MCCALL

Robert L. McCall, El Paso, TX, Claimant.

Cheryl Holman, Chief, PCS Travel Team, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

SHERIDAN, Board Judge.

Claimant, Robert L. McCall, is an employee of the Department of Veterans Affairs (VA). He has asked this Board to review the agency's determination that claimant was not entitled to reimbursement of closing costs associated with his purchase of a home.

Claimant was issued travel orders for a permanent change of station (PCS) move from Arizona to his new duty station in Albuquerque, New Mexico. As part of the relocation expenses, claimant was authorized to be reimbursed certain costs associated with the purchase of a residence at his new duty station. He purchased a home in El Paso, Texas. The home is 266 miles from his new duty station, and a three hour, forty-three minute one-way commute.

Claimant completed his PCS and the VA paid for the relocation including certain closing costs associated with the home purchase. When the VA realized it had erroneously

paid the costs associated with the home purchase, it issued a bill of collection to recover the overpayment.¹

By statute, when an agency transfers an employee in the interest of the Government from one permanent duty station within the United States to another, the agency “shall pay to or on behalf of [the] employee . . . expenses of the . . . purchase of a residence *at the new official station* that are required to be paid by the employee.” 5 U.S.C. § 5724a(d)(1) (2000) (emphasis added). The Federal Travel Regulation, which implements this statute, similarly states that the purpose of an allowance for expenses incurred in connection with the purchase of a residence “is to reimburse [a transferred employee] for expenses that [the employee incurs] due to . . . the purchase of a residence *at [the employee’s] new official duty station.*” 41 CFR 302-11.1(a) (2005) (emphasis added).

We recently concluded in *John Nobles*, CBCA 1131-RELO, 08-2 BCA ¶ 33,872, that a claimant was not entitled to transaction costs associated with a home purchase because the home was not at the employee’s new official duty station, and was not the residence from which the employee regularly commuted on a daily basis. In deciding *Nobles* we looked to well-established case law:

The General Services Board of Contract Appeals, our predecessor in settling claims by federal civilian employees for relocation expenses, repeatedly held that a residence is “at the new official station” only if it is the one from which the employee regularly commutes to and from work on a daily basis. *Wendy J. Hankins*, GSBCA 16324-RELO, 04-2 BCA ¶ 32,686; *Vincent P. Mokrzycki*, GSBCA 16142-RELO, 04-1 BCA ¶ 32,468 (2003); *Richard H. Mogford*, GSBCA 15958-RELO, 03-2 BCA ¶ 32,348; *Claude N. Narramore*, GSBCA 15445-RELO, 01-2 BCA ¶ 31,562; *Elmer L. Grafford*, GSBCA 14176-RELO, 98-1 BCA ¶ 29,700; *David M. Whetsell*, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610. In so holding, the General Services Board was continuing the practice of the General Accounting Office, which previously settled such claims. See *Jesse Jackson, Jr.*, B-251559 (Mar. 31, 1993); *Johnny W. Reising*, B-238086 (June 8, 1990).

08-2 BCA at 167,667.

¹ The amount of the overpayment and subsequent bill of collection are not in the record, but neither are they necessary for this decision.

Claimant asserts he has no permanent residence in Albuquerque and in two years has stayed in Albuquerque only once over the weekend. He says he is not an employee of the Albuquerque VA Medical Center but is, rather, an employee of VA's Office of Information and Technology, and his supervisor is stationed in Tacoma, Washington. These facts, as well as other facts alleged by claimant, even if true, do not overcome the requirement that claimant must commute daily from his residence in El Paso in order to be reimbursed the costs associated with his purchase of the home.

Claimant also asserts that the agency and his supervisor were fully aware that he planned to purchase a home that was not within close proximity of his new duty station. He asserts that his supervisor stated that the purchase would not have any effect on his income or employment, and posits he should not be held responsible for errors that other people made. Incorrect advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *Emily G. Gibson*, CBCA 1160-RELO, slip op. at 2 (Aug. 28, 2008) (citing *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380 (1947) and *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332). Although it is regrettable that claimant may have been given erroneous advice concerning his eligibility for certain benefits in conjunction with his PCS to Albuquerque, the agency nonetheless lacks the authority to pay these expenses. *Amos F. Jones, Jr.*, GSBCA 16305-RELO, 04-2 BCA ¶ 32,677; *Albert R. Wilcox*, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864. The statute and implementing regulations preclude payment of these expenses, even in those situations where both the employee and his agency advisors mistakenly believed the costs could be reimbursed.

In this matter, the claimant does not commute daily from his home in El Paso to his new duty station in Albuquerque. Because of this, he is not entitled to be reimbursed the costs associated with his purchase of the El Paso home.

Decision

The agency determination is affirmed and the claim denied.

PATRICIA J. SHERIDAN
Board Judge